

SAFFRE
Serial No. 10/572,965
May 3, 2010

REMARKS/ARGUMENTS

Claims 3 and 11-17 now stand in the present application. Reconsideration and favorable action is respectfully requested.

Allowable Subject Matter:

Applicant notes with appreciation the Examiner's indication of allowable subject matter in claim 3. For the following reasons, Applicant submits that claim 3 (and all other claims) is in full conformance with 35 U.S.C. §112, first and second paragraphs. Claim 3 is thus allowable.

Claim Objections:

Claims 4 and 7-10 have been objected to because of informalities.

Namely, claims 4 and 7-10 were objected to because they depend on higher-numbered claim 11 or 12. The Office Action states "A dependent claim should refer to a preceding claim." Applicant disagrees with this objection. There is no rule that a dependent claim must refer to a preceding claim. Claims may be renumbered upon allowance. Nevertheless, Applicant has canceled claims 4 and 7-10 and re-presented these claims as new claims 13 and 14-17, respectively, to expedite allowance. Applicant therefore requests that the objections to the claim be withdrawn.

Rejections Under 35 U.S.C. §112:

Claims 3-4 and 7-12 have been rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. In particular, the Office Action alleges that the limitation "users currently require access" in claims 3-4 and 7-12 do not

SAFFRE
Serial No. 10/572,965
May 3, 2010

comply with the written description requirement. This limitation has been deleted from independent claims 3 and 11-12 in favor of “users that currently have active connections” to the resource”. This limitation is supported by, for example, page 7, line 10 of the original specification which makes explicit reference to “active connection.” Applicant therefore requests that the rejection under 35 U.S.C. §112, first paragraph, be withdrawn.

Claims 3-4 and 7-12 have been rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. By this Amendment, editorial amendments have been made to the independent claims to make even more clear that the usage is made by the members, and the measurement of that usage is made by the measuring means. Applicant therefore requests that the rejection under 35 U.S.C. §112, second paragraph, be withdrawn.

Rejections under 35 U.S.C. §103:

Claims 4 and 9-12 have been rejected under 35 U.S.C. §103 as allegedly being unpatentable over Amalfitano (U.S. ‘557) in view of Otis (U.S. ‘241). Applicant traverses this rejection.

In order to establish a *prima facie* case of obviousness, all of the claim limitations must be taught or suggested by the prior art. The combination of Amalfitano and Otis fails to teach or suggest all of the claim limitations. For example, combination fails to teach or suggest “to place each member of the plurality of users that currently have active connections to the resource in a *rank order relative to one another*, the ranking being made according to the measurements, made

SAFFRE
Serial No. 10/572,965
May 3, 2010

using the measurement means, of the usage that each member made of the resource (emphasis added)" as required by independent claim 3 as its dependents. Similar comments apply to independent claims 11 and 12.

The Office Action alleges that page 1, paragraph 8, lines 8-15 of Amalfitano discloses the above-note claim limitations. Applicant respectfully disagrees with this allegation. Page 1, paragraph 8, lines 8-15 of Amalfitano discloses the following (emphasis added):

"If a user has, over a historical period of time, made fewer demands than a stated amount, that user is given a higher priority than a user who has made greater use of the resources than their stated amount. Thus, users making the heaviest demand on the available resources are allocated fewer resources despite their demand, whereas users that make less demands for the resources are granted more of the resources they request."

Based upon the explicit teachings of Amalfitano, Amalfitano measures usage against an absolute value (the "stated amount" in the passage reproduced above). Moreover, individual users may have different "stated amounts" (note the second user is measured against "*their* stated amount", not "*the* [previously mentioned] stated amount" against which the first user is measured). Amalfitano then prioritizes the users in the second category over those in the first, but this is a binary function (exceeded/did not exceed). That is, there is no teaching or suggestion of distinction between the users within each group. In contrast, independent claims 3, 11 and 12 require each user to be sorted into a rank order relative to one another. In independent claims 3, 11 and 12, the prioritization is thus solely by comparison with other users, not with an absolute "stated amount" as explicitly disclosed by Amalfitano.

SAFFRE
Serial No. 10/572,965
May 3, 2010

In Amalfitano, users are thus allocated to bands according to the actual amount of usage. As discussed above, Amalfitano prioritizes users according to whether they have exceeded the stated amount. It is clear in Amalfitano's system that there may be different numbers of users in different categories (priority levels). Amalfitano therefore does not provide a ranking for the plurality of users relative to each other.

Otis fails to resolve the above-described deficiencies of Amalfitano. Accordingly, even if the teachings of Amalfitano and Otis were combined as proposed by the Office Action, the combination would not have taught or suggested all of the claim limitations.

With respect to dependent claim 4 [now new dependent claim 13], sections 13 and 30 of the Office Action express a misunderstanding of percentages. "Unity" does indeed mean "one", "entirety", 100%. However the value cited in paragraph [0056] of Amalfitano is a percentage, specifically 1.08% - which is much less than 100%. If the value "x" were indeed to be unity (100%) it would mean that any user in priority level 1 will be allocated the entire resource.

With respect to dependent claim 9 [now new dependent claim 16], sections 13 and 31 of the Office Action rely on an alleged interpretation of the word "unique" to mean "not typical". However, the meaning of "unique" according to *Webster's Dictionary* is "the only one of its kind" -- which is entirely consistent with its usage in original specification, where each individual user "i" has a restriction factor given by the formula on page 7 line 4, in which, for each value of "i", b(i) will have a different (i.e unique) value. Under the plain and ordinary meaning of unique (again, see *Webster's Dictionary*) and in light of the explicit teachings of the

SAFFRE
Serial No. 10/572,965
May 3, 2010

original specification (which are consistent with the plain and ordinary meaning of “unique”), the allegation that “unique” means “not typical” is unfounded -- particularly when, as in this case, it is used in a context where a mathematically-rigorous definition is provided.

With respect to dependent claim 10 [now new dependent claim 17], the Office Action alleges that the historical use and demand of each of Amalfitano's users will be unique. Even assuming *arguendo* that this is true, it does not follow that they are given unique rankings. Amalfitano refers to "Priority level 1 users" and "Priority level 2 users" etc. (note: plural users at each level). This is clearly also the case from the description in paragraph [0050], since there cannot be only one user at each level if 90% of them are at priority 1 and 10% at priority 2.

The Office Action also remarks that the users' requests are ranked by putting them in a queue. However, the order in the queue is determined by the time of the request, with the previous history only being used to determine how much bandwidth is supplied when the user eventually reaches the head of the queue.

Applicant therefore requests that the rejection under 35 U.S.C. §103 over Amalfitano and Otis be withdrawn.

Claims 7 and 8 have been rejected under 35 U.S.C. §103 as allegedly being unpatentable over Amalfitano and Otis, and further in view of Chuah (U.S. '416, previously cited). Applicant traverses this rejection. Claim 7 and 8 have been canceled. However, new claims 14 and 15 have been added in their place. Each of these new claims depends from base independent claim 12. Accordingly, the comments made above with respect to base independent claim 12 apply equally

SAFFRE
Serial No. 10/572,965
May 3, 2010

to these new claims. The tertiary reference of Chuah fails to resolve the above-described deficiencies of the Amalfitano/Otis combination.

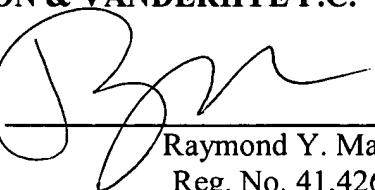
Applicant therefore requests that the rejection under 35 U.S.C. §103 over Amalfitano, Otis and Chuah be withdrawn.

Conclusion:

Applicant believes that this entire application is in condition for allowance and respectfully requests a notice to this effect. If the Examiner has any questions or believes that an interview would further prosecution of this application, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

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